



FINDINGS OF FACT

1. The Lebanon School District is a "public employer" within the meaning of RSA 273-A:1 X.
2. The Lebanon Support Staff Association is the duly certified bargaining agent for support staff employed by the District.
3. The District and the Association are parties to a collective bargaining agreement (CBA) for the period July 1, 1993 to June 30, 1995 which contains a four step grievance procedure ending with final and binding arbitration. It is preceded by (1) a level one discussion with the grievant's supervisor, (2) a level two written grievance and meeting with the Superintendent and (3) a level three hearing before the School Board. No part of the grievance procedure (Board Exhibit No. 1) makes any reference to an agreement by the parties to record grievance proceedings at any level(s) of the agreed upon procedures.
4. According to unrefuted testimony from Association witness Gerard Dixon, Dixon filed a grievance, discussed it with his supervisor without resolution and then reported it to Association representative John Fessenden. Fessenden then became involved in a level two conference about the grievance with Superintendent John Fontana. During that conference, Fontana produced a tape recording of the meeting Dixon had with his supervisor at level one. That recording was made secretly and without Dixon's knowledge. Counsel for the District represented to the PELRB that the District has discontinued the practice of making surreptitious tape recordings as a matter of policy.
5. The Lebanon School Board has insisted on and continues to make tape recordings of level three grievance hearings before it notwithstanding the Association's persistent objection to this practice and absent any agreement between the parties to permit such recordings. Level three hearings before the School Board historically have been in executive session. Association steward William Cartier testified that he has spent more than one year attempting, unsuccessfully, to get a copy of a tape recording of a hearing he had before the Board involving a grievance he had filed. Cartier testified that the Association has participated in taped grievance hearings before the School Board only because if the Association insisted on no taping, then the School Board has indicated it would not proceed with the

hearings. This practice was verified by Fessenden who said that he has objected to it at the commencement of each such hearing.

#### DECISION AND ORDER

There are two acts complained of in these proceedings, the secret recording of grievance discussions at level one and the open recording of level three grievance hearings before the School Board as called for in the CBA. We will not address the surreptitious recording complained of at level one since we were advised through testimony of Mr. Fessenden that the recording itself was the subject of a search warrant, seized by the police, and is now being investigated as a violation of RSA 570-A:2. Our comments pertaining to the insistence on open and known recordings, below, obviously also apply to surreptitious recordings to the extent that the same results obtain, i.e., employees are afraid to speak or assert their rights under their CBA and the parties become more intent on the content of the discussion than settling the dispute at the lower levels (Steps 1, 2 and 3) of the grievance procedure.

Grievance procedures are the result of the give and take of negotiations. They are not all the same; they vary according to what the parties have decided their procedures will be. The grievance procedure agreed upon by the parties to this case appear at Board Exhibit No. 1. There are no provisions contained in that document which permit the recording of grievance meetings or hearings. Thus, insisting on doing so, with the overhanging threat of not proceeding with the meeting before the School Board if the recording is not made, is violative of RSA 273-A:5 I (h) and (i). Likewise, given the uncontested testimony of both Dixon and Cartier, it appears that the recording process, at both level one and level three, had the effect, whether intended or not, of restraining employees from exercising rights conferred under RSA 273-A and their contract. This is violative of RSA 273-A:5 I (a) and (g).

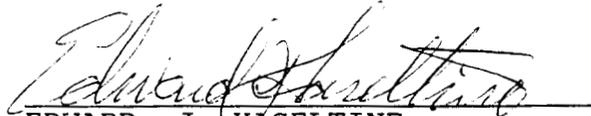
The grievance procedure belongs to the parties. It is reflective of their "deal." Its presumed purpose is to facilitate the fair, quick and inexpensive resolution of disputes arising under the CBA. Any unilateral insistence on procedures flying in the face of this purpose is detrimental to the reason for having a workable grievance procedure. Without an agreement to do so, neither party may insist, over the objection of the other, on recording the preliminary steps of the grievance procedure which are designed and intended to produce discussion and find a way to resolve the dispute informally.

For the reasons stated, the conduct of the District is violative of RSA 273-A:5 I (a), (g), (h) and (i). The District and its agents are directed to cease and desist from insisting on recording meetings, discussions or hearings dealing with grievance

processing under levels one, two and three of Article IX of their CBA unless such recording is mutually agreed to by the parties.

So ordered.

Signed this 22nd day of June, 1995.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.  
Members William Kidder and E. Vincent Hall present and voting.